



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Approve Contract and Art Pieces as Proposed by the Art Advisory Board for the Seward Johnson Sculpture Exhibit for Display in Downtown Lodi from April 2011 through Mid-July 2011 and Appropriating Funds

MEETING DATE: February 16, 2011

PREPARED BY: James M. Rodems, Community Center Director

RECOMMENDED ACTION: Approve contract and art pieces as proposed by the Art Advisory Board for the Seward Johnson sculpture exhibit for display in downtown Lodi from April 2011 through Mid-July 2011 and appropriating funds.

BACKGROUND INFORMATION: On May 26, 2010, the Art Advisory Board voted to create an ad hoc committee to research the Seward Johnson Interactive Sculpture Exhibit and present a proposal to City Council for approval. Ten sculptures of various characters posed in everyday situations would be located at public locations throughout downtown Lodi. The unveiling of the sculpture exhibit will coincide with the Spring Wine Stroll on April 15, 2011, and continue through the first six weeks of the Downtown Farmer's Market.


The proposed pieces are as follows: *Holding Out, Shaping Up, Just A Taste, Nice to See you, Attic Trophy, Ambassador of the Streets, No Mommy That One, Contact, On Top of the News and My Dog Has Fleas.*

The proposed project was passed at the City Council meeting on September 1, 2010. The contract and the sculptures are now being presented for Council approval.

FISCAL IMPACT: \$30,000.00 was allocated at the September 1, 2010 meeting. The additional cost of the program is \$615.00. This amount will also be allocated from the Art in Public Places account. The total amount of the \$30,615.00 includes the exhibit, transportation, and insurance.

FUNDING AVAILABLE: \$192,774.39 as of January 31, 2011.
Account number for the Johnson Sculpture Exhibit #1214011


Jordan Ayers, Deputy City Manager


James M. Rodems
Community Center Director

JR/dkb
Attachments

APPROVED:

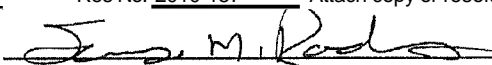


Konradt Bartlam, Interim City Manager

1. AA# _____
2. JV# _____

CITY OF LODI APPROPRIATION ADJUSTMENT REQUEST		
TO:	Internal Services Dept. - Budget Division	
3. FROM:	James M. Rodems	5. DATE: February 4, 2011
4. DEPARTMENT/DIVISION: COM		

6. REQUEST ADJUSTMENT OF APPROPRIATION AS LISTED BELOW					
	FUND #	BUS. UNIT #	ACCOUNT #	ACCOUNT TITLE	AMOUNT
A. SOURCE OF FINANCING	1214	3205	7205	Art in Public Places	\$ 615.00
B. USE OF FINANCING	1214	1214013	1825	Downtown Sculptures	\$ 615.00

7. REQUEST IS MADE TO FUND THE FOLLOWING PROJECT NOT INCLUDED IN THE CURRENT BUDGET
<p>Please provide a description of the project, the total cost of the project, as well as justification for the requested adjustment. If you need more space, use an additional sheet and attach to this form.</p> <p>Ten sculptures of various characters posed in everyday situations are to be located at public locations throughout downtown Lodi. The 'unveiling' of the exhibit is to coincide with the Chamber of Commerce's Spring Wine Stroll on April 15, 2011 and will conclude the second week of July. The cost includes display of the pieces, transportation and insurance.</p>
<p>If Council has authorized the appropriation adjustment, complete the following:</p> <p>Meeting Date: <u>Feb. 16, 2011</u> Res No: <u>2010-157</u> Attach copy of resolution to this form.</p> <p>Department Head Signature: <u></u></p>

8. APPROVAL SIGNATURES	
Deputy City Manager/Internal Services Manager	Date

Submit completed form to the Budget Division with any required documentation.
Final approval will be provided in electronic copy format.



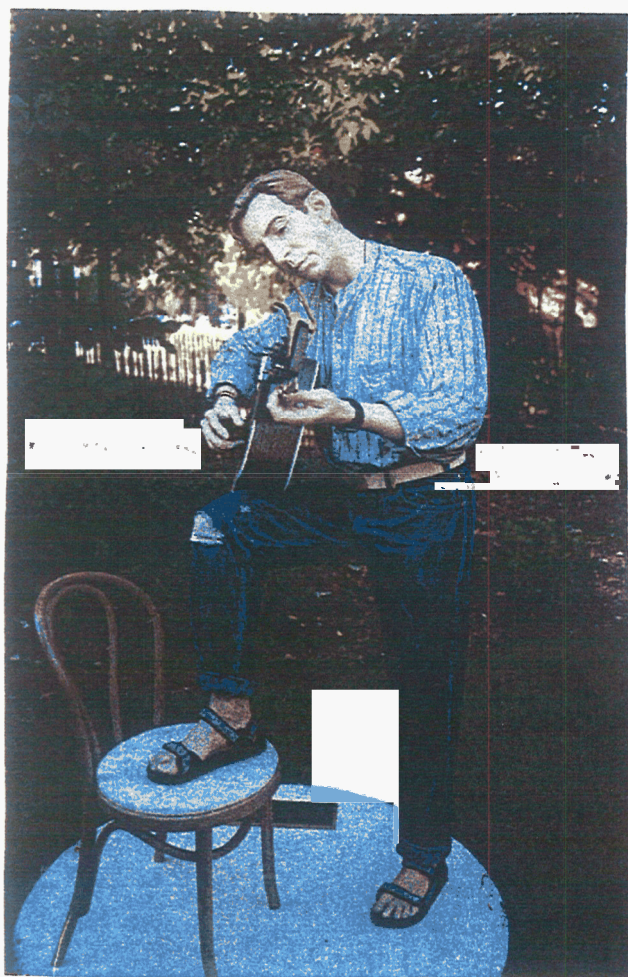
Attic Trophy

A



Nice to See You





My Dog Has Fleas



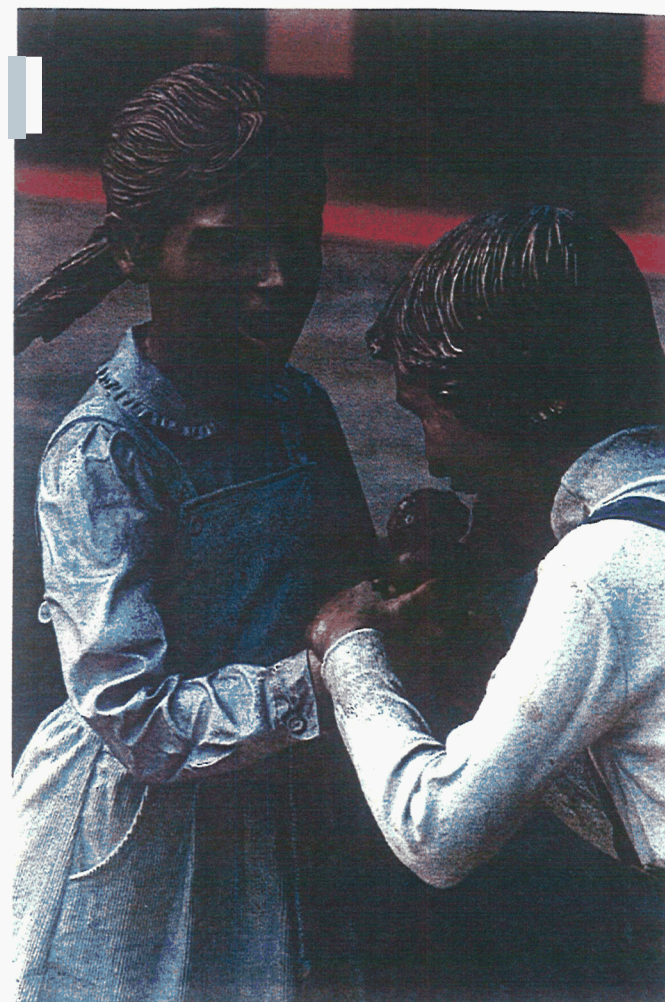
On Top of the News



contact



★ *Just a Taste (last casting)* >





No, Mommy. That One



Shaping Up



Ambassador of the Streets

Holding Out

>



EXHIBIT A

Sculpture(s) on Loan from the Foundation

[Please provide list per Section 1(b), including Stated Value(s) per Section 12(a)(i).]

1.	Seward Johnson, <i>Holding Out</i>	\$86,000.00
2.	Seward Johnson, <i>Shaping Up</i>	\$86,000.00
3.	Seward Johnson, <i>Just A Taste</i>	\$100,000.00
4.	Seward Johnson, <i>Nice to See Y</i>	\$86,000.00
5.	Seward Johnson, <i>Attic Trophy</i>	\$80,000.00
6.	Seward Johnson, <i>Ambassador of the Streets</i>	\$86,000.00
7.	Seward Johnson, <i>No Mommy, That One</i>	\$100,000.00
8.	Seward Johnson, <i>Contact</i>	\$120,000.00
9.	Seward Johnson, <i>On Top of the News</i>	\$86,000.00
10.	Seward Johnson, <i>My Dog Has Fleas</i>	\$86,000.00

SCULPTURE EXHIBITION AGREEMENT FOR J. SEWARD JOHNSON, JR. WORK(S)

This Agreement is made this 23 day of December, 2010 ("Effective Date") by The Sculpture Foundation, Inc. (the "Foundation"), a nonprofit corporation organized under the laws of the State of New Jersey, with a place of business at 14 Fairgrounds Road, Hamilton, New Jersey **08619**, and the City of Lodi: Division of **Arts and Culture** ("Exhibitor"), a [] organized under the laws of the State of _____, with a place of business at 125 S. Hutchins Street, Lodi, California 95240. (The Foundation and Exhibitor shall each be referred to herein as a "Party" or, collectively, as the "Parties").

WHEREAS, the Foundation is a nonprofit corporation organized and operated for charitable and educational purposes as described in Section 501(c)(3) of the Internal Revenue Code of **1986**, as amended, whose mission is to: promote public appreciation and knowledge of art and public placement and view of sculpture; support and lend art to businesses, individuals, charitable organizations, and government entities for public exhibition; and build and revitalize communities through the public placement of art; and

WHEREAS, the Foundation owns certain works of art created by J. Seward Johnson, Jr. for the purposes of public exhibition, display, loan, sale and donation in furtherance of its charitable and educational purposes; and

WHEREAS, the Foundation desires to loan certain sculptural work(s) of art to Exhibitor for the purposes of public display and education in accordance with the terms of this Agreement; and

WHEREAS, Exhibitor wishes to display certain sculpture(s) in publicly open and unsupervised areas received from the Foundation for charitable purposes.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

TERMS AND AGREEMENT

1. Definitions.

(a) Loaned Sculpture(s). The term "Loaned Sculpture(s)" shall mean sculpture(s) owned by the Foundation created by J. Seward Johnson, Jr., loaned to Exhibitor in accordance with the terms of this Agreement and listed in Exhibit A, including, if any, related frames, pedestals, bases, installation structures, background material crating, packaging and/or any other item supplied by the Foundation in connection with any Loaned Sculpture(s).

(b) Loan Period. The term “Loan Period” will mean the period from the date on which Exhibitor receives the Loaned Sculpture(s) listed in Exhibit A, until the date that the Exhibitor makes the Loaned Sculpture(s) available for return to Foundation in accordance with the terms of Section 15(a) herein.

(c) Exhibit Site. The term “Exhibit Site” shall mean the following location:
City of Lodi, CA.

(d) Exhibition Period. The term “Exhibition Period” shall mean Exhibitor’s planned exhibition at the Exhibit Site, presently scheduled to commence on April 13, 2011 and conclude on July 15, 2011.

2. Term.

The term of this Agreement shall be from the Effective Date until sixty (60) days after the Loaned Sculpture(s) are returned to the Foundation, or the termination of this Agreement in accordance with the terms of Section 19 herein, whichever is less.

3. Purpose of Loan.

(a) Exhibition. Exhibitor agrees to use and display the Loaned Sculpture(s) in furtherance of the Foundation’s charitable purpose and in accordance with the terms of this Agreement.

(b) Public Display. Exhibitor hereby represents that the Loaned Sculpture(s) will be on continuous public display during the Exhibition Period at venues or spaces including, but not limited to the Exhibit Site, that are customarily open and accessible to the public for a minimum period of thirty (30) hours each week. Foundation acknowledges that Exhibitor will display the Loaned Sculptures in open, public and unsupervised spaces as reflected in many of Foundation’s promotional materials.

(b) Admission of public. During the Exhibition Period, Exhibitor will admit the public to the Exhibit Site and any other site where the Loaned Sculpture(s) are displayed in accordance with the terms of this Agreement without discrimination or segregation on the basis of race, religious creed, skin color, national origin, ancestry, physical or mental disability, medical condition, marital status, gender, age, or sexual orientation.

4. Assignment.

(a) Exhibitor. Exhibitor may not, at any time, assign or transfer to any party (i) its rights under this Agreement, (ii) possession of the Loaned Sculpture(s), or (iii) any interest in the Loaned Sculpture(s).

(b) Foundation. The Foundation may assign all or any portion of its rights under this Agreement to any third party without prior written notice to Exhibitor.

5. Care and Safekeeping.

(a) Standard of care. Subject to the limits of the public and unsupervised display of the Loaned Sculptures acknowledged in this Agreement, Exhibitor will at all times during the Loan Period (24-hour, seven day basis), handle and care for the Loaned Sculpture(s) in accordance with the highest standards for and best practices concerning the treatment and protection of artworks of a similar nature and value adopted and/or used by major art institutions that regularly handle and care for art of the same nature and value as the Loaned Sculpture(s), taking into account the specific nature and value of the Loaned Sculpture(s), its/their materials, the fragility of the Loaned Sculpture(s) and the other unique properties of the Loaned Sculpture(s) as works of art. Exhibitor will check the condition of the Loaned Sculpture(s) a minimum of one (1) time per week for the duration of the Loan Period.

(b) Security. Subject to the limits of the public and unsupervised display of the Loaned Sculptures acknowledged in this Agreement, Exhibitor will protect the Loaned Sculpture(s) from fire, theft, acts of the public, vandalism, and mishandling, and otherwise provide a safe and secure environment in all respects during the Loan Period, including retrieval, custody, and immediate notification of the Foundation in the event of an emergency.

(c) Installation. The Foundation has the right to supervise and approve the installation of the Loaned Sculpture(s) at the Exhibit Site and the right to specify installation and removal requirements. Unless otherwise agreed upon by the Parties in a signed writing, the Exhibitor will provide professional installation expertise, manpower, and equipment. Once installed, the Loaned Sculpture(s) may not be removed or moved in any manner without the Foundation's prior written consent, except in ~~an~~ emergency (for example, fire).

(d) Siting;/ Withdrawal of Sculptures. Siting of any Loaned Sculpture(s) at the Exhibit Site shall be subject to the Foundation's sole approval. The Loan Sculpture(s) shall not be moved or relocated from its/their original installation sites at the Exhibit Site, including any re-siting of the Loaned Sculpture(s) to any location other than the Exhibit Site and/or withdrawal of the Loaned Sculpture(s) from public display, without the Foundation's prior written consent, except in an emergency (for example, fire). **All** costs associated with moving, relocating, re-siting and/or withdrawal of any Loaned Sculpture(s) will be paid for by the Party that initiated the moving, relocating, re-siting and/or withdrawal. In the event Exhibitor requests the moving, relocating or re-siting of the Loaned Sculpture(s) or withdrawal of the Loaned Sculpture(s) from display, the Exhibitor shall pay the expenses of an experienced ~~art~~ handler/installer (selected by the Foundation) ("Art Handler") to accompany the Loaned Sculpture(s) during such moving, relocating re-siting or withdrawal. Such expenses may include, without limitation, the Art Handler's hourly wages or fees and reasonable business class travel, lodging, and meal costs.

(e) Handling. In every instance, Exhibitor warrants that the Loaned Sculpture(s) will be handled only by trained staff and/or recognized fine art handlers under competent supervision, and under conditions including but not limited to, security measures approved by the Foundation. The Loaned Sculpture(s) must not be handled except as expressly permitted in this Agreement.

(f) **Inspection.** Within thirty (30) days after the execution of this Agreement, the Foundation may inspect the Exhibit Site. If the Exhibit Site is not approved by the Foundation, the Foundation may terminate this Agreement without any liability to Exhibitor. At all times during the Loan Period and upon reasonable notice to Exhibitor, the Foundation and/or its representatives will have the right to access, inspect, and view the Loaned Sculpture(s). If at any time during the Loan Period the Foundation identifies any damage to the Loaned Sculpture(s), the Foundation may, in the exercise of reasonable discretion, require immediate remedial measures, remove the damaged Loaned Sculpture(s) and/or terminate this Agreement upon issuance of a pro rata refund of all costs incurred by Exhibitor, unless Foundation can establish that the damage was caused by the negligent or intentional misconduct or breach of this Agreement by Exhibitor, in which case Foundation may terminate this Agreement under Section 19 hereunder without any liability or further obligation to Exhibitor. The Pro Rata Refund shall be measured as the percentage that the actual exhibit time bears to the contractual exhibit time.

(g) **No waiver.** The Foundation's approval, review, or supervision of, or attendance at, Exhibitor's facilities, or of any packing, installation, removal, and/or other handling of the Loaned Sculpture(s), will not in any way make the Foundation liable or responsible for any such activity or events, or waive or diminish any of Exhibitor's obligations and responsibilities under this Agreement or at law. However, Foundation's approval of locations shall constitute an acknowledgement that those locations meet the requirements of this Agreement.

6. Loan Fee.

Exhibitor agrees to pay and the Foundation agrees to accept a total loan fee in the amount of U.S. \$22,500.00 (Twenty-two thousand five hundred dollars and no cents) for the loan of the Loaned Sculpture(s) pursuant to this Agreement (the "Loan Fee"). The Loan Fee shall be payable by Exhibitor according to the following schedule: \$11,250.00 (Eleven thousand two hundred **fifty** dollars and no cents) of the Loan Fee will be payable upon execution of the Agreement and \$11,250.00 (Eleven thousand two hundred **fifty** dollars and no cents) of the Loan Fee will be payable by April 13, 2011. No rights other than those set forth in this Agreement shall pass to Exhibitor upon payment of the Loan Fee to the Foundation.

7. Shipping and Installation.

The Foundation shall be fully responsible for properly and securely packing the Loaned Sculpture(s) for shipment and for paying all costs of packing, loading, and professional and secure roundtrip transportation of the Loaned Sculpture(s). The Foundation will have the right to specify a carrier of its own choosing, or to approve a professional carrier and to specify packing and transportation requirements, which Exhibitor agrees to follow. In no event will Exhibitor appoint any provider of transportation or packing services or implement any transportation or packing measures for the Loaned Sculpture(s) without the Foundation's prior written consent.

8. Storage. If necessary, the Loaned Sculptures will be professionally packed and stored securely at the Exhibit Site in Exhibitor's on-site secure storage and remain packed until such time as required for installation and exhibition of the Loaned Sculpture(s). All crate and packing

materials used in transporting and packing the Loaned Sculpture(s) must be stored and preserved during the Loan Period by the Exhibitor. Any lost or damaged crate and/or packaging materials will be replaced at Exhibitor's expense.

9. Condition Reports.

- (a) The Foundation will provide Exhibitor with a written condition report(s) detailing the conditions of the Loaned Sculpture(s) prior to the commencement of the Loan Period ("Foundation Condition Report(s)").
- (b) If the packed Loaned Sculpture(s) arrive with any visible damage to the crate, packaging or contents thereof, any damaged crate or other packaging may not be opened without the Foundation's consent.
- (c) Exhibitor will, at its own cost, thoroughly examine and make detailed condition report(s) immediately upon receipt of the Loaned Sculpture(s) and immediately before repacking the Loaned Sculpture(s) ("Exhibitor Initial Condition Report(s)"). Exhibitor will deliver a copy of the Exhibitor Initial Condition Report(s) to the Foundation within three (3) business days after preparation thereof. Exhibitor will be deemed to have received the Loaned Sculpture(s) in the condition indicated in the Foundation Condition Report(s), unless Exhibitor informs the Foundation after unpacking the Loaned Sculpture(s) otherwise in its Exhibitor Initial Condition Report(s).
- (d) The Foundation will have the right to require that Exhibitor provide further written condition reports detailing the current condition of the Loaned Sculpture(s) at any time during the Loan Period.

10. Conservation; Alteration. Exhibitor agrees not to perform any invasive examination or inspection of the Loaned Sculpture(s), and not to conserve, repair, alter, modify, unmat, unframe, remat or reframe, remove or add any base or pedestal to, restore the Loaned Sculpture(s) or any **part** of the Loaned Sculpture(s), or otherwise disassemble any part of the Loaned Sculpture(s), or substitute or replace any glass or other cover, or consent to or permit any of the foregoing, without the express prior written consent of the Foundation.. Hanging or mounting devices existing on the Loaned Sculpture(s) may not be removed or repositioned from the Loaned Sculpture(s), nor may any other devices be attached, without the Foundation's prior written consent.

11. Damage or Loss.

- (a) Report. Exhibitor must immediately report to the Foundation by telephone (to be followed up in writing delivered within three (3) business days), any evidence of damage to or loss or deterioration of, or endangerment to, the Loaned Sculpture(s) during the Loan Period.
- (b) Mitigation. Following any damage, loss, deterioration, or endangerment to the Loaned Sculpture(s), without limiting any other provision of this Agreement, Exhibitor must take and

pay the cost of any reasonable actions the Foundation may require to secure and protect the Loaned Sculpture(s) from further damage, loss, deterioration, or endangerment. Exhibitor (itself or its insurer) will be solely responsible for all costs of conservation necessitated by any damage, loss, deterioration, or endangerment that occurs during the Loan Period. Such costs shall not exceed the value of any individual damaged Loaned Sculpture.

12. Insurance: Liability for Loss or Damage.

(a) **Insurance Requirements.** Unless otherwise agreed upon by the Parties in a signed writing, Exhibitor agrees to: (1) insure the Loaned Sculpture(s) against “all risks” of physical loss or damage throughout the Loan Period as set forth in this Section **12**; and (2) procure and maintain commercial general liability insurance in the aggregate amount of \$2,000,000 (two million dollars) insuring against any claims for damage or destruction of property, bodily ~~injury~~, or death arising out storage, maintenance, and/or exhibition of the Loaned Sculpture(s), whether at the Exhibit Site or otherwise. All insurance obtained by Exhibitor to insure the Loaned Sculpture(s) (the “Exhibitor Policies”) must be acceptable to the Foundation in form and content and must comply with all of the following requirements:

(i) **Valuation.** Exhibitor must insure the Loaned Sculpture(s) fully for the current market value(s), as such value(s) may change from time to time, but no less than the stated value(s) indicated on Exhibit A of this Agreement (the “Stated Value(s)”), each of which Exhibitor agrees represents a fair, reasonable, and accurate value for the associated Loaned Sculpture. The Foundation will have the right to solicit new valuations to determine the Stated Value(s) of the Loaned Sculpture(s), as the Foundation deems appropriate, in its reasonable discretion. Promptly after receipt of the Foundation’s written request(s) (including via e-mail), Exhibitor must take any and all necessary steps to ensure that the insurance coverage hereunder is increased accordingly (including without limitation by increasing the Stated Value(s) of the Loaned Sculpture(s) on all Exhibitor Policies).

(ii) **Additional Insured and Loss Payee.** The Exhibitor Policies must name the Foundation either as named insured or as additional insured and loss payee in the event of loss, damage, or destruction of the Loaned Sculpture(s). If Exhibitor receives any insurance proceeds in respect to the Loaned Sculpture(s), Exhibitor will only receive and hold such proceeds in trust for the Foundation and will promptly deliver all such proceeds to the Foundation. However, receipt of any insurance proceeds shall serve ~~as~~ a credit against any amounts otherwise owed by Exhibitor to Foundation for damage, restoration or protection to the Exhibits under this Agreement.

(iii) **Severability.** The Exhibitor Policies must provide for coverage independent from, and regardless of, any defenses insurer may have against, Exhibitor or any other insured. The Exhibitor Policies must provide that coverage under such policies cannot be invalidated or prejudiced by Exhibitor’s actions. To the extent that any Exhibitor Policies also provide coverage for Exhibitor’s legal liability to the Foundation, such insurance must provide for severability of interests, and must not include any exclusion that would preclude suits between insureds and/or between insureds and loss payees.

(iv) Partial and Total Loss. If the Loaned Sculpture(s) are damaged, the amount of loss will be the cost and expense of restoration plus the diminution in value. The diminution in value will be measured by taking the greater of the current market value of the Loaned Sculpture(s) immediately before the damage occurred or the Stated Value(s) of the Loaned Sculpture(s) and subtracting the current market value after restoration as determined in the sole discretion of the Foundation. If any of the Loaned Sculpture(s) are lost (including, without limitation, stolen) or destroyed, the proceeds from the policies must be paid directly to the Foundation in an amount equal to the greater of the current market value of the Loaned Sculpture(s) at the time of loss or the Stated Value(s).

(v) No Contest. Exhibitor's insurer(s) must agree not to contest or litigate this Agreement.

(vi) Other Insurance. If the Foundation elects to maintain its own insurance coverage, such coverage will in all events be secondary and noncontributory to the coverage provided by Exhibitor, and will not release Exhibitor from, or waive or diminish, any of Exhibitor's obligations or liabilities under this Agreement.

(vii) Repurchase Right. If any Loaned Sculpture(s) is/are lost (including, without limitation, stolen) and then recovered after the Foundation has been reimbursed by the insurer, the Foundation will have the option to exchange the insurance proceeds for the recovered Loaned Sculpture(s).

(viii) Notice. The Foundation must receive at least ninety (90) days prior written notice of cancellation, intent not to renew, or any substantive change in policy terms or rate ("Revision to Insurance Coverage"). After receipt of notice of any Revision to Insurance Coverage, the Foundation may, at its sole discretion, terminate this Agreement without liability to Exhibitor.

(ix) Lenders paid first. If the Exhibitor Policies are not exclusive to the Foundation (if, for example, the Loaned Sculpture(s) are insured under blanket insurance policies), then the Exhibitor Policies must provide that third party lenders to Exhibitor (such as the Foundation) have **priority** of recovery over Exhibitor and any other insureds, additional insureds, and loss payees under the Exhibitor Policies, according to allocation provisions that are acceptable to the Foundation, such that the Foundation is fully compensated for any loss.

(x) Jurisdiction. The Exhibitor Policies must agree to the jurisdiction and governing law provisions of Section 20 of this Agreement; provided, however, that if Exhibitor has used its best efforts to cause the Exhibitor Policies to agree to such jurisdiction and governing law provisions, Exhibitor will not be in breach of this Agreement for failing to comply with the jurisdiction and governing law provisions of Section 20 if Exhibitor's insurers will not agree or will agree only if Exhibitor pays an additional premium or fee.

(b) Endorsements: Certificate of Insurance. Exhibitor agrees to notify its insurers of the terms of this Agreement, and to obtain from its insurers an endorsement including any of the provisions of this Section 12 not already included in the policy terms. In addition, Exhibitor will obtain and provide the Foundation with a certificate of insurance (i) naming the Foundation as a named insured or additional insured and, in either event, loss payee, and (ii) evidencing coverage of the Loaned Sculpture(s) for loss or destruction for the Stated Value(s), in a manner satisfactory to the Foundation. Exhibitor agrees to deliver such certificate and endorsement (if applicable), along with a copy of the provisions of the Exhibitor Policies pertaining to: (1) all risks coverage; (2) exclusions; (3) valuation; (4) severability; (5) determination of partial and total loss; (6) arbitration; (7) treatment of other insurance; (8) repurchase right (right to exchange proceeds); and (9) lenders priority of payment to the Foundation no fewer than ten (10) business days prior to the commencement of the Loan Period. At the Foundation's request, Exhibitor will also deliver a copy of the terms of Exhibitor's policy.

(c) Deductibles. Exhibitor agrees to pay any and all deductibles relating to insurance coverage for the Loaned Sculpture(s) and/or relating to any claim made under the general commercial general liability insurance required pursuant to Section 12(a), which deductibles may not exceed an amount approved by the Foundation.

(d) Separate Insurance Policy. At the Foundation's option, in lieu of adding the Loaned Sculpture(s) and the Foundation to Exhibitor's existing policy, the Foundation may require Exhibitor to obtain and pay for a separate insurance policy covering only the Loaned Sculpture(s), issued by a carrier of the Foundation's choice and otherwise meeting the requirements of this Section 12.

(e) Disposition of damaged art work. Notwithstanding any other term or provision of this Agreement, in the event of any partial damage to the Loaned Sculpture(s) during the Loan Period, the Foundation will, in all events, have the right to retain the Loaned Sculpture(s) and title thereto, and will not have any obligation to transfer the Loaned Sculpture(s) to Exhibitor or Exhibitor's insurers. If there is total damage to any of the Loaned Sculpture(s) during the Loan Period, and if Exhibitor itself pays the Foundation for the loss under the provisions of this Agreement, then the Foundation will have the right to retain the Loaned Sculpture(s) and title thereto, and will not have any obligation to transfer the Loaned Sculpture(s) to Exhibitor, even if the Loaned Sculpture(s) are worthless. However, if Foundation retains the Loaned Sculpture(s) any remaining value will be a credit against Exhibitor's loss payment obligations. If there is total damage to the Loaned Sculpture(s) during the Loan Period, and if Exhibitor's insurer(s) pay the Foundation in full for the loss, Exhibitor will nevertheless use its best efforts to cause its insurer(s) to return the Loaned Sculpture(s) to the Foundation, and to ensure that the Foundation retains all title thereto, even if the Loaned Sculpture(s) are worthless. If Exhibitor is unable to cause Exhibitor's insurer(s) to return the Loaned Sculpture(s) to the Foundation despite Exhibitor's best efforts, then Exhibitor will continue to use its best efforts to ensure that Exhibitor's insurer(s) dispose of the Loaned Sculpture(s) in consultation with the Foundation and *in* a manner respectful of the Foundation's wishes. Except as provided in this Agreement, retention by the Foundation of the Loaned Sculpture(s) and/or title thereto will in no way affect any right of the Foundation's under this Agreement.

(f) Exhibitor's liability beyond insurance: duty to indemnify. Exhibitor agrees to assume absolutely and unconditionally all liability, and to fully reimburse and indemnify the Foundation for any and all loss, damage and/or destruction relating to the Loaned Sculpture(s), or to any part of the Loaned Sculpture(s), during the Loan Period, where such loss, damage and/or destruction (i) is not fully covered (including all expenses required of the Foundation) under the terms of the Exhibitor Policies for any reason, and (ii) the result of or caused directly or indirectly by any negligent, wrongful or intentional act, omission or error of, or other failure to meet any term(s) or special standard(s) of care set forth in this Agreement, of Exhibitor or anyone on its behalf or any of its employees, agents, officers, directors, representatives, or contractors. This obligation to reimburse and indemnify the Foundation extends, without limitation, to any shortfall in insurance that results from any instance in which Exhibitor's fine arts insurance does not or cannot meet the insurance or indemnity related terms of this Agreement. Notwithstanding any inference to the contrary contained in this paragraph, Exhibitor's liability will not be limited in any way with regard to any intentional harm (be it an act or omission) by Exhibitor, or anyone on its behalf or any of its employees, agents, officers, directors, representatives, or contractors, during the Loan Period.

(g) No Waiver. Exhibitor's failure to provide any information, certificates, or policies required by this Agreement, including without limitation, either a certificate of insurance or an endorsement establishing that all of the insurance requirements set forth herein have been met, and/or the Foundation's acceptance of any policy or certificate of insurance not in compliance with the requirements of this Agreement will not in any event be or be deemed to be, or constitute, a waiver by the Foundation of any of the requirements of this Agreement or of Exhibitor's covenants, liabilities, or obligations under this Agreement.

13. Copyright; Indemnification: Photography Limitations.

(a) Compliance with law. Exhibitor agrees to observe and comply with all copyright, trademark, and other intellectual property laws and regulations, all moral rights including, without limitation, attribution rights, any rights under 17 U.S.C. §106(a), and all rights of privacy and publicity (individually and collectively "I.P. Rights"), relating to the Loaned Sculpture(s), and not to infringe or violate any I.P. Rights.

(b) Copyright. Foundation represents and warrants that it is the copyright owner of the Loaned Sculpture(s). Exhibitor agrees that Foundation shall retain copyright ownership of the Loaned Sculpture(s), including the exclusive right to make reproductions. Exhibitor agrees never to contest the copyright(s) of the Foundation and/or its successors, heirs, and/or assigns in the Loaned Sculpture(s), except in an action by Exhibitor against Foundation for indemnity for copyright claims made against Exhibitor by third parties.

(c) Reproductions prohibited. Exhibitor may not make or use any reproduction of the Loaned Sculpture(s) including, but not limited to two-dimensional images or photographs depicting the Loaned Sculpture(s), for any commercial purpose without prior written consent of the Foundation.

(d) Authorized Images. Exhibitor may publicly display, reproduce, and distribute photographic reproductions of Loaned Sculpture(s) approved by the Foundation to promote and market Exhibitor's exhibitions which include the Loaned Sculpture(s) and in retrospective community brochures, on its website and in planning documents ("Authorized Images"). Copies of all Exhibitor's materials containing Authorized Images shall be provided to the Foundation for the Foundation's records. All Authorized Images must show the appropriate notice **as** provided below in Section 13(f). All Authorized Images must show the appropriate notice **as** provided below in Section 13(b)(v). All of Exhibitor's rights to use Authorized Images provided herein shall cease on the earliest of: (1) the close of the Exhibition Period; (2) the date that any Loaned Sculpture(s) is withdrawn or replaced pursuant to Section 22 herein, for Authorized Images featuring such Loaned Sculpture(s); or (3) the date of termination of this Agreement pursuant to Section 19 herein.

(e) Use of photographic reproductions. Other than as provided in Section 13(c) and 13(d), Exhibitor may not use photographic reproductions of the Loaned Sculpture(s) for any purpose, including postcards, note cards, posters, books, CDs, DVDs, and prints, without the Foundation's prior written approval.

(f) Copyright Notice.

(i) Credit line for Authorized Images. The following credit line shall appear adjacent to each Authorized Image:

"[title of the Loaned Sculpture] by J. Seward Johnson, Jr., On Loan From The Sculpture Foundation, Inc."

(ii) Copyright notice for individual Authorized Images. Unless otherwise instructed by the Foundation, in addition to the credit line required by Section 13(f)(i) above, the following copyright notice shall appear adjacent to individual Authorized Images in which Foundation owns the copyright:

"Photograph – © [year of publication of photograph], The Sculpture Foundation, Inc."

In the event the Foundation advises Exhibitor that the Foundation is not the copyright owner of the Authorized Image, the notice above must be modified to replace "The Sculpture Foundation, Inc." with the name of the photographer or party who owns the copyright in the Authorized Image.

(iii) Copyright notice for materials containing Authorized Images. If Exhibitor elects to produce materials containing Authorized Images, the following copyright notice shall appear in each copy thereof:

"© [year of publication], [Exhibitor], All rights reserved"

Unless otherwise instructed by the Foundation the following additional copyright notice must appear directly below Exhibitor's copyright notice:

"The photographs contained herein are © [include the most recent publication date for any Authorized Image used] or earlier, The Sculpture Foundation, Inc., except where otherwise noted, and are used with permission of The Sculpture Foundation, Inc. All rights reserved."

(iv) Notices not mutually exclusive. The credit lines and copyright notices above are not mutually exclusive and, depending on Exhibitor's respective use, circumstances may require use of one or more of the credit line and/or notices.

14. Copies of Exhibitor Materials.

Use of Foundation photographs in catalogues and other promotional media is subject to the Foundation's prior consent. Exhibitor will provide the Foundation with twenty (20) complimentary copies of any catalogue (including hardback, CD, DVD and any other media) and other written material that it may publish or distribute or authorize relating to the Loaned Sculpture(s) and/or the Exhibitor's Exhibit Site.

15. Return/Removal of Loaned Sculptures.

(a) Unless otherwise agreed upon by the Parties in a signed Writing pursuant to Section 7(a) of this Agreement, Exhibitor agrees to make the Loaned Sculpture(s) available for return to Foundation no later than one (1) week after the end of the Exhibition Period or within five (5) days of receipt of a notice of termination from the Foundation ("Termination Notice") if this Agreement is terminated under Section 19 herein. Exhibitor will not have any right to retain the Loaned Sculpture(s) after the end of the Exhibition Period under any circumstances.

(b) In the event that the Loaned Sculpture(s) are not made available for return to the Foundation in accordance with this Agreement, the Foundation and/or its representative(s), at Exhibitor's cost and expense, will have the right to terminate this Agreement and immediately retrieve the Loaned Sculptures (without waiver of any claims), including without limitation, and to the extent allowed by law, enter Exhibitor's premises without prior notice and immediately retrieve the Loaned Sculpture(s) without responsibility for any unintentional loss or damage due to such removal and without liability to Exhibitor.

(c) Exhibitor will only release the Loaned Sculpture(s) to, and take instructions concerning the Loaned Sculpture(s) from, the Foundation or its duly authorized agent. In the case of an agent acting on the Foundation's behalf, Exhibitor must not act without reliable written proof of the agent's authorization from the Foundation.

16. Responsibility.

(a) No liability or warranty except Copyright. The Foundation will bear no expense relating to the lending of the Loaned Sculpture(s) to Exhibitor. The Foundation does not make (and

hereby expressly disclaims) any and all warranties or representations (express or implied), including to Exhibitor or otherwise, in respect of the Loaned Sculpture(s), or any right in the Loaned Sculpture(s), including, but not limited to, title, quiet enjoyment, or authenticity. However, Foundation represents and warrants that it is the copyright owner of the Loaned Sculpture(s) and agrees to defend, indemnify and hold harmless Exhibitor against any third party claims for Copyright infringement.

(b) **Indemnification.** Except as provided in Paragraph 16(a), Exhibitor agrees to and will release, indemnify, and defend the Foundation and its trustees, directors, officers, employees, contractors, representatives, and agents from and against all costs, losses, taxes, assessments, demands, fees, and expenses (including attorneys' fees and costs), claims, damages, suits, actions and/or proceedings, threatened against or suffered by Exhibitor or the Foundation or their respective trustees, directors, officers, employees, or agents, and relating to or arising out of this Agreement; any breach or failure to perform by Exhibitor under this Agreement; any act or omission by or on behalf of Exhibitor or any director/officer, employee, agent, contractor, representative, or invitee of Exhibitor ("Exhibitor's Agents"); any prohibited use of I.P. Rights by Exhibitor or Exhibitor's Agents not consistent with this Agreement and/or the lending of the Loaned Sculpture(s) to Exhibitor, including, without limitation, the possession, preservation, reproduction, and/or display of the Loaned Sculpture(s), and the return of the Loaned Sculpture(s) to the Foundation.

17. Ownership. Exhibitor will at all times recognize only the Foundation as the legal owner of the Loaned Sculpture(s), and will not recognize nor entertain any competing claims by any third party in respect of the Loaned Sculpture(s). Exhibitor agrees never to contest the Foundation's and/or its successors', heirs', and/or assigns' title in the Loaned Sculpture(s). If Exhibitor becomes aware of any claim or circumstances that may give rise to a claim in respect of the Loaned Sculpture(s), it will immediately inform the Foundation and take such reasonable steps as the Foundation may require (including the immediate removal of the Loaned Sculptures from the Exhibitor's Exhibit Site), at the Foundation's sole cost and expense. Exhibitor hereby waives any and all interest and claim in the Loaned Sculpture(s), and agrees not to in any way encumber, claim or assert or cause or allow any other party to claim, any interest of any kind in the Loaned Sculptures.

18. Confidentiality. Except as required by the California Public Records Act, the terms of this Agreement, including, but not limited to, the Loan Fee (if any), the Stated Value(s) and condition of the Loaned Sculpture(s), all transportation and shipping arrangements, and all additional information designated or provided by the Foundation as confidential relating to this Agreement and the Loaned Sculpture(s), must be kept confidential by Exhibitor. Except as reasonably related and necessary to fulfilling its obligations under this Agreement, Exhibitor will not publish or disclose such information or permit any trustee, director, officer, agent, representative, employee, or affiliate of Exhibitor to publish or disclose such information, to any person, by any means, at any time, without the Foundation's prior written consent.

19. Termination.

- (a) Breach. The Foundation may, at any time, terminate this Agreement, without any liability to or further obligation to the Exhibitor, in the event of a breach by Exhibitor of any conditions or term of this Agreement, If the Agreement is terminated by the Foundation, the Foundation shall notify the Exhibitor of such termination and provide a Termination Notice to Exhibitor. Exhibitor shall make the Loaned Sculpture(s) available for return shipping pursuant to the terms of Section 15 herein within five (5) days of receipt of the Termination Notice.
- (b) Termination upon transfer of assets. Should ownership of an individual Loaned Sculpture be legally transferred from the Foundation to Exhibitor, this Agreement shall terminate with respect to such Loaned Sculpture upon the effective date of such transfer.
- (c) Termination upon withdrawal. If the Foundation, in its sole discretion, withdraws all Loaned Sculpture(s) pursuant to Section 22(a) herein and does not provide Exhibitor with Substitute Sculpture(s) as defined in Section 22(b) herein, this Agreement shall terminate upon the date of withdrawal of the last Loaned Sculpture(s).

20. Applicable Law: Exclusive Jurisdiction; Venue and Removal.

- (a) Applicable law. This Agreement and all disputes relating to or arising out of this Agreement (including insurance disputes, unless prohibited by the insurance laws and regulations applicable to the policy(ies)) will be governed by and construed in accordance with the laws of any jurisdiction that is most favorable to the Foundation as an insured, without giving effect to the provisions of such jurisdiction relating to conflicts or choice of law.
- (b) Exclusive jurisdiction; venue and removal. All disputes and matters arising under, in connection with, or incidental to this Agreement and/or the Loaned Sculpture(s), including, but not limited to, any dispute involving insurance coverage or proceeds, will be litigated, if at all, in and before a federal court with diversity jurisdiction in the State of New Jersey or the Superior Court of New Jersey located in Mercer County, New Jersey, USA, to the exclusion of other courts of other states and to the exclusion of other venues. Exhibitor and the Foundation EXPRESSLY CONSENT TO THE JURISDICTION OF EITHER COURT and agree that this venue is convenient and not to seek a change of venue or to seek to dismiss the action on the ground of forum non conveniens, not to assert any defense based on lack of jurisdiction of this court, and not to bring any action arising under, in connection with, or incidental to this Agreement in any other court.

21. Taxes. Exhibitor agrees to be fully responsible for (and to promptly pay) any and all levies, liens, taxes (including, but not limited to, personal property taxes and/or GST, VAT, or similar taxes) and/or all other assessments of any kind or nature relating to the lending of the Loaned Sculpture(s) for the use by Exhibitor of the Loaned Sculpture(s) during the Loan Period, including, but not limited to, the transportation, possession, presence, and/or display of the Loaned Sculpture(s).

22. Withdrawal and Substitution.

(a) **Withdrawal.** While it is the intention of the Foundation to permit the Loaned Sculpture(s) listed in Exhibit A to remain available to Exhibitor for the full duration of the Loan Period, the Foundation also expressly reserves the right in its sole discretion (With prior written notice) to withdraw any Loaned Sculpture listed in Exhibit A at any time without liability to the Exhibitor.

(b) **Substitution.** If the Foundation, in its sole discretion, withdraws a Loaned Sculpture(s), the Foundation shall, at Foundations sole cost and expense, substitute another Loaned Sculpture acceptable to Exhibitor owned by the Foundation in its place (“Substitute Sculpture”), which Substitute Sculpture shall then be deemed a Loaned Sculpture, without any liability to the Foundation. The Parties shall amend Exhibit A from time to time, as needed, to reflect substitution of any Loaned Sculpture(s).

(c) **Costs.** Consistent with Section 5(a) of this Agreement, all costs associated with withdrawing and substituting any Loaned Sculpture(s) will be paid for by the Foundation when such withdrawal or substitution is initiated by the Foundation pursuant to Section 22(a) and/or 22(b).

23. Miscellaneous. This Agreement may be executed in counterparts, each of which shall constitute an original and both of which shall constitute the same instrument. Nothing in this Agreement will be deemed to create a joint venture, partnership, lease, or principal-agent, employer-employee, or any similar relationship or arrangement, between Exhibitor and the Foundation. Nothing in this Agreement will be construed to give any party (other than Exhibitor and the Foundation, and their successors and assigns as provided herein) any legal or equitable right, benefit, remedy, or claim in respect of this Agreement and Exhibitor’s and/or the Foundation’s covenants and obligations hereunder. Any waivers under this Agreement must be in writing to be effective. The party signing this Agreement on behalf of Exhibitor hereby represents and warrants that s/he is duly authorized to sign this Agreement on behalf of and bind Exhibitor as provided in this Agreement. The terms and conditions of Sections 11, including, but not limited to full satisfaction of all obligations to reimburse the Foundation thereunder, 12, 13, 16, 17, 18, 19, 20, 21, 23, 24, 25 and 26 of this Agreement will survive the expiration of this Agreement. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such term or provision or portion thereof as to that application will be severed from the rest of this Agreement and such event will not impact the effectiveness or validity of the remainder of such provision or any other provision or term hereof. If at any time the Foundation’s consent or approval is required as set forth in this Agreement, such approval or consent may be given or denied by the Foundation in its sole discretion. The captions and descriptive headings of this Agreement are for convenience **only** and shall be of no force or effect in construing or interpreting any of the provisions of this Agreement.

24. Compliance with Laws and Regulations. Exhibitor shall adhere to all federal and state laws and regulations applicable to its obligations and responsibilities under this Agreement.

25. Notice. All notices, requests, demands, consents, approvals, and other communications (including any change to this provision) required to be given in writing under this Agreement are considered given upon receipt if delivered personally or sent by recognized courier, certified

mail (return receipt requested and postage-prepaid), or fax (if delivery is confirmed by the sender), as follows:

For Exhibitor:

Arts & Events Manager
City of Lodi
Division of Arts and Culture
125 S. Hutchins Street
Lodi, CA 95240

For the Foundation:

Curator
2525 Michigan Avenue, Ste. A-6
Santa Monica, California 90404
(310) 264-2400
(310) 264-2403 fax

With a Copy to:

Lodi City Attorney's Office
P.O. Box 3006
Lodi, CA 95241

With a Copy to:

Chief Administrative Officer
The Sculpture Foundation, Inc.
14 Fairgrounds Road
Hamilton, NJ 08619
(609) 689-1040
(609) 689-1059 fax

26. Entire Agreement. This Agreement (including all Exhibit(s) hereto) constitutes the entire agreement between the Foundation and Exhibitor with respect to the subject matter hereof. Any prior agreements, promises, negotiations, or representations that may have been made or relied upon that are not expressly set forth in this Agreement are of no force or effect. This Agreement may be modified only in writing, which writing must be signed by both parties.

The Foundation and Exhibitor execute this Agreement by their duly authorized agents as of the Effective Date.

THE SCULPTURE FOUNDATION, INC.

Name: Paula Stoeke

Title: Paula Stoeke Cur

EXHIBITOR

By: _____

Name: _____

Title: _____

Exhibits

Exhibit A: Sculpture(s) on Loan from the Foundation

Approved as to form

City Attorney

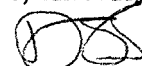


EXHIBIT A

Sculpture(s) on Loan from the Foundation

[Please provide list per Section 1(b), including Stated Value(s) per Section 12(a)(i).]

1.	Seward Johnson, <i>Holding Out</i>	\$86,000.00
2.	Seward Johnson, <i>Shaping Up</i>	\$86,000.00
3.	Seward Johnson, <i>Just A Taste</i>	\$100,000.00
4.	Seward Johnson, <i>Nice to See You</i>	\$86,000.00
5.	Seward Johnson, <i>Attic Trophy</i>	\$80,000.00
6.	Seward Johnson, <i>Ambassador of the Streets</i>	\$86,000.00
7.	Seward Johnson, <i>No Mommy, That One</i>	\$100,000.00
8.	Seward Johnson, <i>Contact</i>	\$120,000.00
9.	Seward Johnson, <i>On Top of the News</i>	\$86,000.00
10.	Seward Johnson, <i>My Dog Has Fleas</i>	\$86,000.00

RESOLUTION NO. 2010-157

A RESOLUTION OF THE LODI CITY COUNCIL
ACCEPTING A PROPOSAL FROM THE ART ADVISORY
BOARD FOR A SEWARD JOHNSON SCULPTURE
EXHIBIT IN DOWNTOWN LODI

=====

WHEREAS, on May 26, 2010, the Art Advisory Board voted to create an ad hoc committee to research the Seward Johnson Interactive Sculpture Exhibit, which includes ten sculptures of various characters posed in everyday situations; and

WHEREAS, the Art Advisory Board recommends that the City Council accept the proposal to place the Exhibit in Downtown Lodi during the period April 2011 through mid-July 2011.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby accept the proposal from the Art Advisory Board for a "Seward Johnson Sculpture Exhibit" in Downtown Lodi for display for the period April 2011 through mid-July 2011; and

BE IT FURTHER RESOLVED that funds in the amount of \$30,000 be appropriated from Account No. 01214 - Art in Public Places for this exhibit.

Dated: September 1, 2010

=====


I hereby certify that Resolution No. 2010-157 was passed and adopted by the City Council of the City of Lodi in a regular meeting held September 1, 2010, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Johnson, and Mayor Katzakian

NOES: COUNCIL MEMBERS – Hitchcock and Mounce

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None


RANDI JOHL
City Clerk

RESOLUTION NO. 2010-157

A RESOLUTION OF THE LODI CITY COUNCIL
ACCEPTING A PROPOSAL FROM THE ART ADVISORY
BOARD FOR A SEWARD JOHNSON SCULPTURE
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BE IT FURTHER RESOLVED that funds in the amount of \$30,615 be appropriated from Account No. 01214 - Art in Public Places for this exhibit to include the display of sculptures, insurance and transportation.

Dated: September 1, 2010

=====

I hereby certify that Resolution No. 2010-157 was passed and adopted by the City Council of the City of Lodi in a regular meeting held September 1, 2010, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Johnson, and Mayor Katzakian

NOES: COUNCIL MEMBERS – Hitchcock and Mounce

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None

RANDI JOHL
City Clerk

